

1 RILEY A. CLAYTON
2 Nevada Bar No. 005260
rclayton@lawhjc.com

3 **HALL JAFFE & CLAYTON, LLP**
4 7425 Peak Drive
5 Las Vegas, Nevada 89128
(702) 316-4111
Fax (702) 316-4114

6 *Attorneys for Defendant,*
7 *State Farm Mutual Automobile Insurance Company*

8 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

9 THOMAS ZIRKIN, individually,

Case No. 2:22-cv-01627-JCM-DJA

10 Plaintiff,

11 vs.

12 STATE FARM MUTUAL AUTOMOBILE
13 INSURANCE COMPANY, an Illinois
Corporation; and USAA GENERAL
INDEMNITY COMPANY; a Texas
Corporation,

**STIPULATION AND ORDER TO DENY
USAA GIC'S MOTION TO DISMISS
(Doc. 5) AND STATE FARM'S
JOINDER (Doc. 9) AS MOOT**

14 Defendants.

15 This Stipulation and Order to Deny USAA GIC's Motion to Dismiss Plaintiff's Second
16 Cause of Action and State Farm's Joinder as Moot (hereinafter "Stipulation") is entered into by
17 Plaintiff, Thomas Zirkin ("Plaintiff"), and Defendant, USAA General Indemnity Company
18 ("USAA GIC"), and Defendant, State Farm Mutual Automobile Insurance Company ("State
19 Farm") (collectively referred to as the "Parties").

20 On September 30, 2022, Defendant USAA GIC filed its Motion to Dismiss Plaintiff's
21 Second Cause of Action and Motion to Strike Plaintiff's Request for Attorney's Fees (Doc. 5).
22 The Motion requested the Court dismiss Plaintiff's tortious breach of the covenant of good faith
23 and fair dealing ("bad faith") cause of action and strike Plaintiff's request for attorney's fees.
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25 On October 10, 2022, Defendant State Farm Mutual Automobile Insurance Company
26 filed a Joinder to USAA GIC's Motion to Dismiss Plaintiff's Second Cause of Action and
27 Motion to Strike Plaintiff's Request for Attorney's Fees (Doc. No. 9).

1 On October 17, 2022, Plaintiff Zirkin filed his Response to Defendant USAA GIC's
2 Motion to Dismiss/Strike Attorneys Fees (Doc. 15). Plaintiff stated, in essence, that he would
3 be filing an amended complaint, which eliminated the second cause of action for bad faith,
4 thereby rendering the Motion/Joinder moot. Also on October 17, 2022, Plaintiff filed his First
5 Amended Complaint (Doc. 14). The First Amended Complaint removed Plaintiff's second
6 cause of action for bad faith, making the action solely a UIM breach of contract case. The First
7 Amended Complaint, therefore, renders the Motion to Dismiss (Doc. 5) and the Joinder to the
8 Motion to Dismiss (Doc. 9) moot. *See e.g., Barnes v. District of Columbia*, 42 F. Supp. 3d 111,
9 117 (D.D.C. 2014)(“[w]hen a plaintiff files an amended complaint as a right . . . the amended
10 complaint becomes the operative pleading . . .any pending motion to dismiss becomes moot.”)

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1 Accordingly, the parties stipulate that the Motion to Dismiss (Doc. 5)/Joinder (Doc. 9)
2 should be denied as “moot.”

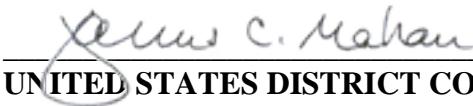
3 IT IS SO STIPULATED.

4 Dated October 21, 2022 5 HALL JAFFE & CLAYTON, LLP 6 /s/ <i>Riley A. Clayton</i> 7 RILEY A. CLAYTON Nevada Bar No. 005260 7425 Peak Drive Las Vegas, Nevada 89128 <i>Attorneys for Defendant, State Farm Mutual Automobile Insurance Company</i>	8 Dated October 21, 2022 9 THE MEDRALA LAW FIRM, PROF. LLC 10 /s/ <i>Jakub P. Medrala</i> 11 JAKUB P. MEDRALA Nevada Bar No. 12822 615 S. 6 th Street Las Vegas, NV 89101 <i>Attorneys for Plaintiff</i>
12 Dated October 21, 2022 13 SPENCER FANE LLP 14 /s/ <i>Mary E. Bacon</i> 15 MARY E. BACON Nevada Bar No. 12686 300 S. Fourth Street, Suite 950 Las Vegas, Nevada 89101 <i>Attorneys for Defendant, USAA General Indemnity Company</i>	16

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18 O R D E R

19 IT IS SO ORDERED.

20 Dated: October 27, 2022

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23 James C. Mahan
24 UNITED STATES DISTRICT COURT JUDGE